

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ROBERTO A. OLIVAS,

Petitioner, No. CIV S-04-1306 DFL CMK P

vs.

DARREL ADAMS, et al.,

Respondents. FINDINGS AND RECOMMENDATIONS

Petitioner is a state prisoner proceeding pro se. He seeks a writ of habeas corpus pursuant to 28 U.S.C. 2254.

Two orders recently served on petitioner at his address of record were returned by the postal service. Mail returned on April 22, 2005, was undeliverable because “name and number don’t match.” The mail returned on May 18, 2005, was undeliverable because “unable to ID/no inmate .” Because petitioner’s mail was returned just after he filed a change of address and there has been an increasing number of instances of the CDC failing to deliver inmates’ legal mail, the court contacted the CDC to determine petitioner’s correct address. Upon contacting the CDC, the court discovered that petitioner was no longer in the custody of the CDC, and had been paroled into the custody of Immigrations and Customs Enforcement (“ICE”) for possible deportation.

In his petition for federal habeas relief, petitioner did not challenge his conviction, but instead claimed that he was held in violation of his constitutional rights because the Board of Prison Terms failed to have counsel appear at his 2002 hearing. Petitioner also claimed that the district attorney violated his due process rights by violating his plea agreement. The relief petitioner sought was a new hearing. As petitioner has been paroled from the custody of the CDC, his request for relief is now moot.

IT IS RECOMMENDED that this action be dismissed as moot.

The clerk is directed to serve this order on petitioner at the following address:

Roberto Olivas-Garay
Eloy Detention Center
A#35875710 Cell 506
4465 East Hanna Road
Eloy, AZ 85321

12 These findings and recommendations are submitted to the United States District
13 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty
14 days after being served with these findings and recommendations, petitioner may file written
15 objections with the court. The document should be captioned “Objections to Magistrate Judge’s
16 Findings and Recommendations.” Petitioner is advised that failure to file objections within the
17 specified time may waive the right to appeal the District Court’s order. Martinez v. Ylst, 951
18 F.2d 1153 (9th Cir. 1991).

19 | DATED: May 26, 2005.

Craig M. Kellison
CRAIG M. KELLISON
UNITED STATES MAGISTRATE JUDGE